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Attorneys for *Applicant* QUALCOMM INCORPORATED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re *Ex Parte* Application of:

Case No. 24-mc-80019

QUALCOMM INCORPORATED,

Applicant.

**DECLARATION OF HELEN
FAIRHEAD IN SUPPORT OF *EX
PARTE* APPLICATION FOR AN
ORDER PURSUANT TO 28 U.S.C. §
1782 GRANTING LEAVE TO
CONDUCT DISCOVERY FOR USE IN
A FOREIGN PROCEEDING**

Application for an Order Pursuant to 28
U.S.C. § 1782 Granting Leave to Conduct
Discovery for Use in a Foreign Proceeding

1 I, HELEN FAIRHEAD, declare as follows:

2 1. I am a partner in the firm of Norton Rose Fulbright LLP (“NRF LLP”), and a
3 solicitor licensed to practice law in England and Wales. Together, NRF LLP and Quinn Emanuel
4 Brussels (“QEB”) represent the Applicant Qualcomm Incorporated (“Qualcomm”) in ongoing legal
5 proceedings in the United Kingdom (“U.K. Class Action”).

6
7 2. I submit this declaration in support of Qualcomm’s *Ex Parte* Application for an
8 Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Conduct Discovery from Apple Inc.
9 (“Apple”) and Samsung Semiconductor, Inc. and/or Samsung Electronics America, Inc.
10 (“Samsung”) for use in a foreign legal proceeding (“Application”). This declaration is based on my
11 personal knowledge and documents I have reviewed, and if called as a witness, I could and would
12 testify competently to the matters stated herein.

13
14 **BACKGROUND OF THE U.K. CLASS ACTION**

15 3. Qualcomm is headquartered in San Diego, California. It is an inventor and licensor
16 of the technologies that enable cellular communication and, separately, a supplier of modem chips
17 and related software that are used in cellular devices (phones, tablets, etc.).

18 4. On February 18, 2021, the Consumers’ Association (who represent the class in the
19 U.K. Class Action) filed a collective proceedings claim form before the Competition Appeal
20 Tribunal (“CAT”) in the United Kingdom. The CAT is a judicial body of the United Kingdom that
21 was created to adjudicate cases involving competition or economic regulatory issues.

22
23 The U.K. Class Action involves the Consumers’ Association’s claims that Qualcomm’s chipset
24 supply and licensing practices allowed it to obtain “supra-competitive” royalty payments from
25 Apple and Samsung for its LTE standard essential patents (“SEPs”), and that these “supra-
26 competitive” royalty payments were then passed on to consumers.

27 5. The Consumers’ Association first acknowledged to Qualcomm and to the CAT in
28

1 June 2023 that it may need to file § 1782 applications in the United States but waited until
2 December 7, 2023 to do so. Indeed, since January 2023, Qualcomm had been repeatedly requesting
3 that the Consumers' Association provide details of the third-party discovery it intended to seek, but
4 the Consumers' Association waited until just before filing its § 1782 application in this Court before
5 finally providing Qualcomm with an indication of the nature of the discovery it intended to seek
6 from Apple and Samsung.

7
8 6. The CAT held a fourth Case Management Conference ("CMC") in the U.K. Class
9 Action on January 9 and 10, 2024. Commenting on the U.S. discovery issue, the CAT noted that
10 the material requested by the Consumers' Association "may not be of central relevance" but went
11 on to explain that "there is no suggestion that we go into the trial at this point deliberately on a date
12 which is before you expect to get the US material."¹

13
14 7. In respect of disclosure obtained from Apple and Samsung's subsidiaries in the
15 U.K., the Tribunal noted at the fourth CMC that, "I don't think it would be reasonable for [the
16 Consumers' Association] to get documents, sit on them for two months and then have a look at
17 them" for the purposes of determining whether they are relevant, and whether they should therefore
18 be shared with Qualcomm.

19
20 **THE REQUIREMENTS OF § 1782**

21 8. Qualcomm is a party to the U.K. Class Action.

22 9. Apple's headquarters are located in this district at One Apple Park Way, Cupertino,
23 California 95014. Samsung Semiconductor, Inc. maintains its "campus" office in this district at
24 3655 N 1st Street, San Jose, California 95134.

25 10. The information requested from Apple and Samsung is "for use" in the U.K. Class
26

27
28 ¹ The transcript of the fourth CMC will be made available in due course on the case page of the CAT's website.

1 Action. Specifically, it will be used to further support Qualcomm's arguments in these foreign
 2 proceedings that it did not force Apple and Samsung to pay "supra-competitive" royalties for its
 3 patents, and its licenses with Apple and Samsung were freely negotiated.

4 **THE INTEL FACTORS**

5 11. Apple and Samsung are not participants in the U.K. Class Action.

6 12. The discovery sought from Apple and Samsung is not obtainable through the foreign
 7 proceedings because, on information and belief, Apple and Samsung are located outside of the
 8 jurisdiction of the foreign court. The CAT does not generally have jurisdiction to order disclosure
 9 from Apple or Samsung, where the evidence sought by Qualcomm is not located in the U.K., and
 10 neither entity is domiciled in the U.K.

11 13. The CAT has indicated that it would be receptive to judicial assistance via § 1782
 12 discovery, provided that any such discovery does not cause delays in the timetable to trial in the
 13 U.K. Class Action. At present, there is no directive from the CAT that it would not be receptive to
 14 the requested material.

15 14. To my knowledge, this request is not sought to, and does not have the effect of,
 16 circumventing any foreign proof-gathering limits or other policies of a foreign country or the United
 17 States.

18 15. Any confidentiality concerns can be addressed through a protective order if needed
 19 (in addition to through the existing confidentiality regime under the CAT).²

20 I declare under penalty of perjury under the laws of the United States of America that the
 21 foregoing is true and correct.

22
 23
 24
 25
 26
 27 ² Qualcomm notes that both Apple and Samsung are already familiar with the confidentiality regime in the
 28 U.K. Class Action and have previously consented to certain disclosure of their own material in accordance
 with its terms.

1 Dated: January 26, 2024

2 By: /s/ Helen Fairhead
Helen Fairhead

3
4 **FILER'S ATTESTATION**

5 Pursuant to Civil LR 5.1(i)(3), the undersigned hereby attest that I have on file all
6 holographic signatures corresponding to any signatures indicated by a conformed signature (/S/)
7 within this e-filed document.

8 Dated: January 26, 2024

9
10 By: /s/ Katherine G. Connolly
11 Katherine G. Connolly